



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Forensic Medical Advisory Service, Inc.

File: B-248551.2

Date: October 28, 1992

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the preparation of the decision.

DIGEST

1. Although the protester's proposal showed its experience was superior to awardee's, as reflected in its overall higher score under the experience factor, the agency reasonably downgraded the protester's proposal where the proposal emphasized experience on a similar contract for peer review of medical care without adapting experience to current requirement, and experience on contracts other than this similar peer review contract was limited.

2. Where solicitation required offerors to propose on a firm, fixed-price basis and provided no information on the number of medical records to be reabstracted, awardee's proposal, which contained an estimate of the number of reabstractions to be performed, was an unequivocal offer to perform the contract at a firm, fixed-price since awardee did not condition additional reabstractions exceeding its estimate on an increased price.

3. Agency reasonably determined that awardee's estimate of performance costs was realistic, even though significantly lower than the independent government estimate, where the supporting data and the rationale submitted substantiated awardee's lower cost estimate.

DECISION

Forensic Medical Advisory Service, Inc. (FMAS) protests the award of a contract to West Virginia Medical Institute (WVMI) under request for proposals (RFP) No. 101-5-92, issued by the Department of Veterans Affairs (VA) for external peer review of medical care. FMAS challenges the VA's evaluation of technical and cost proposals.

We deny the protest.

The RFP, issued August 26, 1991, solicited proposals for a firm, fixed-price contract for a base year and 4 option years to create and operate a system of external peer review of the quality of care delivered in the Veterans Health Administration at 172 VA medical centers (VAMC).

The RFP required offerors to submit technical and cost proposals, and stated that technical approach/qualifications was significantly more important than cost (price). Evaluation of the technical proposals would be based on the following five factors (and listed subfactors), in descending order of importance:¹ experience, personnel, understanding of the scope of work and the review plan, resources, and management plan. The first two factors were more important than the third, and the third was more important than the fourth and fifth.

Cost proposals were to be evaluated under two subfactors: total cost and cost realism. The RFP explained that in evaluating the offeror's proposed cost, the government would determine whether the cost: (1) reflects an understanding of the project and ability to successfully organize and perform the contract; (2) is based on adequate estimating procedures, is supported by backup documentation, and is realistic in terms of the offeror's proposed technical approach; (3) is reasonable when compared to similar complex efforts; and (4) reflects affordability when compared to the independent government cost estimate (IGCE), which was \$45 million. Award was to be made to the responsible offeror whose offer, conforming to the solicitation, was determined to be most advantageous to the government ("the best overall response"), technical approach, price and other factors considered.

The VA received six proposals by the amended February 3, 1992, closing date; three of the proposals, including FMAS' and WVMI's (the only ones relevant here), were included in

¹The agency's specific numerical weighing of the evaluation factors was not disclosed in the RFP.

the competitive range. The proposals were evaluated by the technical evaluation committee (TEC) for technical merit and by the contracting officer for cost. Following technical and cost discussions with the offerors, best and final offers (BAFO) were requested and received on March 13. WVMi's cost was \$26,609,203 (for the basic year and 4 option years), while FMAS' cost was \$41,896,134. The offerors' revised proposals were evaluated as follows:

<u>TECHNICAL</u>	<u>FMAS</u>	<u>WVMi</u>	<u>Total Points</u>
Experience	182	175	200
Personnel	173	182	200
Understanding SOW	130	138	150
Resources	21	21	25
Management Plan	22	23	25
Total	528	539	600
Translated point score ²	53	54	60

<u>COST</u>	<u>FMAS</u>	<u>WVMi</u>	<u>Total Points</u>
Total Cost	13	20	20
Cost realism	9	10	10
Understanding	4	4	4
Adequate estimating	1	2	2
Reasonableness	2	2	2
Affordability	2	2	2
Total	31	40	40
Combined Point Score (Cost and Technical)	84	94	100

In reviewing the BAFOs, the TEC noted that although WVMi's technical score was slightly higher than FMAS', the proposals were essentially technically equal. WVMi's cost was approximately \$15 million lower than FMAS' cost, however, which resulted in its superior total score. The agency considered WVMi's proposed costs reasonable and realistic, and awarded it the contract on the basis that its proposal was the most advantageous to the government. After its debriefing by the agency, FMAS filed this protest.

²The offerors received an average score under each technical factor; the average scores were then added together to determine the total technical point score for all technical factors. This total was divided by 10 to reach the translated point score.

TECHNICAL EVALUATION

FMAS' Proposal

The protester contends that its technical proposal was not properly evaluated under the experience factor. Specifically, FMAS argues that, since it is the incumbent contractor on a similar Civilian Peer Review Program for the Department of Defense (DOD), the model for the current RFP, and has performed a prior peer review contract for the Department of Health and Human Services (HHS), the agency was unreasonable in downgrading its score on the basis that it lacked experience relevant to operating an external peer review panel for a large, multi-institutional program such as contemplated under the proposed contract. FMAS also takes exception to the VA's downgrading of its proposal due to its "wholesale transfer of the DOD experience without adaptation for VA requirements"; the protester challenges each of the agency's specific examples showing how FMAS' proposal failed to distinguish the DOD program from the current requirement.

We will examine a technical evaluation to ensure that it is reasonable and consistent with the evaluation criteria. Pemco Aeroplex Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367.

We find that the VA's evaluation of FMAS' proposal under the experience factor was reasonable. Although the VA found that FMAS' past experience indeed was superior to WVMI's (as reflected in its overall higher score under the experience factor), primarily due to FMAS' peer review experience as the incumbent contractor at DOD, it slightly downgraded the proposal under the experience factor for other reasons. First, the agency found that despite the advantages FMAS had gained as the incumbent contractor on the DOD contract, FMAS' peer review experience on contracts other than the DOD contract was limited. In this regard, the evaluation documentation indicates that information in FMAS' proposal regarding its peer review experience on contracts other than the DOD contract "did not reflect relevancy in many instances to a multi-institutional peer review program," such as contemplated under the proposed contract. For example, the agency found that the information in FMAS' proposal regarding its prior peer review experience on the HHS contract was vague, and that as a result, the VA could not determine whether the experience was relevant to the current requirement. Thus, contrary to the protester's allegation, the record shows that the agency did not downgrade FMAS' proposal on the basis that the firm's DOD experience was not relevant to operating the VA's large, multi-institutional external peer review program, but instead downgraded the proposal for failing to show how

FMAS' non-DOD experience was relevant to the current requirement. We find this was a reasonable basis upon which to downgrade FMAS' proposal. Further, since, as noted above, FMAS in fact received a higher score than WVMI under the experience factor due primarily to consideration of its DOD experience, we find no basis to question the overall scoring of FMAS' experience in this regard.

The VA also determined that FMAS emphasized its DOD experience without specifically adapting its proposal to the VA's requirements. The VA warned FMAS during discussions that it had proposed additional tasks that apparently were performed under the DOD program but were not required under the current RFP, and that FMAS had emphasized its prior performance under the DOD contract without describing its plan for evaluating the results under the VA's peer review program. Although the protester argues that it corrected these deficiencies in its BAFO, our review of the record shows that the protester merely acknowledged the weaknesses identified by the agency without implementing all of the requested changes in its proposal. For example, although the agency requested FMAS to describe how it would validate the effectiveness of the VA's occurrence screening program, FMAS in its BAFO merely acknowledged the RFP's requirements in this regard and the weaknesses identified by the agency without setting forth a step-by-step plan for assessing the operations of the program. We therefore find no basis upon which to question VA's evaluation of FMAS' technical proposal in this regard.

WVMI's Proposal

FMAS also contends that the agency's evaluation of WVMI's experience was not consistent with the stated evaluation criteria. The protester argues that in evaluating WVMI's proposal, the agency failed to determine "the comparability of the offeror's collective experience . . . from the size of the cited contracts in terms of dollar amounts, number of personnel involved, and length of the contracts as well as with regard to the technical focus of the experience," as required by the RFP, and instead merely evaluated WVMI's proposal based on the total number of medical records WVMI claimed to have abstracted. FMAS maintains that the agency therefore failed to note that WVMI's services were not similar in scope and complexity to those required under the current contract. Specifically, the protester claims that WVMI only abstracted 40,000 medical records for 80 hospitals under its contracts as a peer review organization (PRO) for the Medicare program in Delaware and West Virginia, whereas the current solicitation requires the abstraction of 50,000 medical records in 172 hospitals nationwide. FMAS also alleges that the 200,000 medical records that WVMI abstracted for the National Institute of Drug Abuse were

much shorter in length than those required to be abstracted under the current solicitation. FMAS concludes that WVMI's experience was overrated and that its proposal should have been further downgraded under this factor.

The record shows that the agency in fact reviewed the comparability of experience in accordance with the evaluation scheme in the solicitation. Pursuant to the solicitation requirement to furnish a listing of the types of "similar work performed within the last 5 years," WVMI's proposal listed numerous specific government contracts that the firm had performed, described the types of services performed under each of these contracts, and specified the length and total value of each contract. The TEC found that the technical focus of the projects identified in WVMI's proposal showed "substantial, relevant experience in the areas of medical record abstracting; conduct of peer review operations; recruiting, training, and retaining abstractors; working with large data sets; data display; and report preparation." The evaluators also noted that the contracts WVMI performed as a PRO for West Virginia and Delaware were several years in length, similar to this contract, and that all of the previous contracts listed in WVMI's proposal "fall in the multi-million dollar category," as does the current contract. The evidence therefore shows that the agency did not evaluate WVMI's experience based only on the total number of medical records abstracted, as the protester contends, but instead undertook a detailed comparison of the firm's prior experience with the approach required under the contract.

Further, the record does not establish that the services provided under WVMI's prior contracts were improperly evaluated as similar in scope and complexity to those required under the current RFP. The VA determined that WVMI's combined experience conducting peer reviews for numerous federal, state, and private health organizations showed that the firm had performed services similar in scope to those required under the current solicitation. Although FMAS maintains that the medical records abstracted by WVMI under its prior contracts were fewer and shorter in length than those required here, the "similar work" provision did not expressly require, and according to the agency was not intended to require, a showing that past projects involved abstracting medical records of a specified length; offerors only needed to show that past projects involved the same type of work (i.e., extracting specific data from patients' medical records and entering this information into microcomputers). Since the comparison was in accordance with the RFP's requirements, we find that there is no basis for concluding that the agency should have further downgraded WVMI's proposal under the experience factor.

COST PROPOSAL

Firm, Fixed-Price Contract

FMAS contends that award to WVMI was improper because the firm's BAFO took exception to the RFP's requirement for a firm, fixed-price offer. In support of its position, the protester points to the following examples in WVMI's BAFO:

"[F]or this BAFO we have made the following assumptions regarding data abstraction: . . .

"[4.] Cases that Fail the Initial Screen--We estimate that 30 percent of the cases abstracted each month will fail the computer screens.

"[5.] Reabstracts--We assume that, of those records that fail the initial screen and go to peer review, 50 percent will require reabstraction.

"Since the RFP states the Government has no way of estimating the percentage of cases that will fail the screening or peer review panel determination we would request that should an award be made to WVMI, the above performance standards be incorporated as part of the contract statement of work."

FMAS maintains that by insisting that the above-referenced assumptions and estimates be incorporated into the contract's statement of work, WVMI limited the services it would provide under its firm, fixed-price offer, and conditioned the performance of additional services beyond this limit on an increased price. The protester contends that WVMI therefore failed to commit itself unequivocally to providing all of the services required under the RFP at the firm, fixed price it had offered.

In a negotiated procurement, to be considered technically acceptable and form the basis for award, a proposal must conform to all material terms and conditions of the RFP, including the requirement for fixed prices. Cajar Defense Support Co., B-237522, Feb. 23, 1990, 90-1 CPD ¶ 213.

We find that WVMI did not qualify its firm, fixed-priced offer. The RFP required offerors to establish plans for conducting quality of care reviews that specifically provided for "routine reabstraction of medical record data related to cases of medical care which fail initial computerized screening or preliminary peer review panel determination." Since the solicitation provided no information on the number of cases to be reabstracted, offerors were required to estimate in their BAFOs the number of cases that

would fail initial screening and preliminary peer review panel determination, WVMi's estimates were included for this purpose. (Indeed, FMAS likewise described in its proposal certain assumptions that would impact its costs, stating for example that its proposed staffing level was based on the assumption that three major studies were to be documented each year). Although WVMi did request that its performance standards be incorporated as part of the contract statement of work, we note this was only a request and not a demand. Further, in its BAFO, WVMi affirmed its obligation to perform all the work required under the firm, fixed-price contract when it specifically stated that its abstractors would follow the instructions and/or requests of the peer review panel in collecting additional information for the reabstractions. In our view, WVMi did not qualify its commitment to satisfy the RFP requirements at a fixed price by suggesting that the VA incorporate its performance standards into the contract, since this request did not condition additional reabstractions exceeding its estimate on an increased price. See generally BEMW, Inc., B-238654.2, Aug. 9, 1990, 90-2 CPD ¶ 117.

Cost Realism

FMAS contends that the agency failed to conduct a proper cost realism evaluation in accordance with the solicitation's evaluation scheme. According to the protester, had the agency conducted a proper evaluation, it would have determined that WVMi's projected 30-minute estimate for abstracting a medical record was much lower than the IGCE, and that WVMi's estimated costs therefore were unrealistically low.


Where firm, fixed-price contracts are sought, cost realism ordinarily is not considered in proposal evaluation since such a contract provides for a definite price, and places upon the contractor the risk and responsibility for all contract costs and resulting profit or loss. Fairchild Space and Def. Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190; Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 CPD ¶ 552. Nevertheless, agencies, as here, may properly use a cost realism analysis as a gauge of the offerors' understanding of the solicitation's requirements. Id.

We find nothing improper in the VA's cost realism evaluation. The record shows that the agency reviewed the components of WVMi's offered fixed price in its initial proposal, since the price was substantially below the IGCE. In response, WVMi provided detailed information to explain and substantiate its estimated costs.

After conducting a detailed analysis of WVMi's proposal, considering each of the price elements proposed in light of the government estimate, the VA determined that WVMi had established its ability to limit its costs of performance to a level below the IGCE. Although WVMi's estimate for abstractor costs for the initial contract year was approximately \$430,000 lower than the IGCE, the VA determined that the assumption underlying WVMi's price was reasonable. Specifically, the agency determined that, while the IGCE was based on the assumption that abstracting a medical record would require 1 hour, WVMi demonstrated in its proposal that its abstractors could abstract a medical record in approximately 30 minutes. In this regard, WVMi's data showed that in a project funded by the Health Care Financing Administration, the firm has been able to reduce the average time necessary to abstract a medical record to 22 minutes through the use of laptop computers. Further, an analysis completed by WVMi's proposed program development coordinator, who was the former Director of Education and Development and Regional Coordinator for the DOD Civilian Peer Review Program, confirmed WVMi's 30-minute abstracting estimate.

We conclude that the agency evaluated WVMi's price in accordance with the RFP and had a reasonable basis for concluding that the low price did not indicate a lack of technical understanding.

The protest is denied.


for James F. Hinchman
General Counsel